

REMARKS

I. Introduction

The Final Action:

Finally rejects claim 23 under 35 U.S.C. § 112, first paragraph; and

Finally rejects claims 1-22 and 24-62 under 35 U.S.C. § 103(a).

This Response:

Traverses the rejection of claim 23; and

Traverses the rejection of claims 1-22 and 24-62.

II. Rejections Under 35 U.S.C. § 112, First Paragraph

The Final action rejects claim 23 for failing to comply with the written description requirement of 35 U.S.C. § 112, first paragraph. Specifically, the Examiner states that he is unable to find the subject matter of claim 23 in the specification locations cited by the Applicants in their Response dated April 8, 2004 (hereinafter "Previous Response").

Claim 23 recites

The router system of claim 22 wherein said at least one packet segment is selected from the group consisting of portions of packets that are larger than said chunk payload, portions of packets that are equal in size to said chunk payload, and portions of packets that are smaller in size than said chunk payload.

The Applicants respectfully submit that claim 23 contains a *Markush* group, formatted according to M.P.E.P. § 2173.05(h) and containing subject matter that is adequately described in several portions of the written description, as cited in the Previous Response. For example, beginning at line 10 page 9, the specification states:

Packet header information specifies whether a packet segment contained in the chunk is a packet start or a packet end, if that packet segment is the entire packet [*portions of packets that are equal in size to said chunk payload*] including both start and

end, or whether the packet segment is the middle of the packet. This information is used for reassembling multi-chunk packets [*portions of packets that are larger than said chunk payload*] as well as for specifying whether a packet is contained completely within the chunk [*portions of packets that are smaller in size than said chunk payload*].

While this is not the only place the subject matter of claim 23 is disclosed, as shown above, each member of the claimed *Markush* group is at least disclosed within the cited portion. Therefore, the Applicants respectfully ask the examiner to withdraw the rejection to claim 23.

III. Rejections Under 35 U.S.C. § 103(a)

The Final Action Rejects claims 1-22 and 24-62 as obvious in light of various combined references and Official Notices. The Applicants respectfully remind the Examiner that M.P.E.P. § 2143 requires a rejection made for obviousness to establish a prima facie case by meeting three basic criteria. First, the rejection must provide motivation for combining the cited references and notices that is found either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art. Second, that combination must have inspired some reasonable expectation of success. Third, the cited combinations must teach or suggest all the limitations of the rejected claims. The Applicants respectfully submit that the rejections contained in the Final Action do not meet these criteria, and, thus, the Final Action does not establish a prima facie case for rejecting any of the pending claims.

A. Official Notices

In the rejection of claims 2-4, 19, 27-29, 32, 34, 36, 42, 46, 48, 51-54, and 57-62, the Final Action repeatedly relies on teachings that the examiner claims “would be obvious.” No references are given for these teachings, thus the Applicants believe that the Examiner has taken a series of Official Notices. In accordance with 37 CFR 1.104(d)(2), the Applicants hereby request that the Examiner provide documentary evidence of these teachings. If the examiner is instead relying on personal knowledge, the Applicants hereby request that the Examiner provide an affidavit or declaration setting forth the specific factual statements and

explanations of specific findings. Failing either, the rejection can not be maintained, *see* M.P.E.P. § 2144.03, and the Applicants respectfully ask the Examiner to withdraw the rejections of claims 2-4, 19, 27-29, 32, 34, 36, 42, 46, 48, 51-54, and 57-62.

B. The Rejections Using the Combination of *Woodward* and *Miles*

The Final Action rejects claims 1-4, 14-22, 24-29, 37-48, 53, and 57-62 as obvious in light of Woodward et al., U.S. Patent No. 6,151,318 hereinafter *Woodward*), and Miles et al., U.S. Patent No. 6,665,495 (Hereinafter *Miles*). However, the Applicants respectfully submit that the Final Action has failed to establish a prima facie case for rejecting these claims, because, among other things, the combination of *Woodward* and *Miles* do not teach or suggest all of the claim limitations found in claims 1-4, 14-22, 24-29, 37-48, 53, and 57-62.

Claim 1 recites “substantially fixed sized chunks, each said chunk being formatted to include a framing symbol.” To meet this limitation, the Final Action contends that “fragment type 34” of *Woodward* “functions as the framing symbol.” *See* Final Action page 3. The Applicants respectfully disagree. A framing symbol “is used to determine where in a stream of bits beginning and trailing ends of a chunk are located,” *see* the disclosure page 10 line 20. In contrast, *Woodward* uses fragment 34 “to signal to the satellite communications systems the contents of payload 36,” *see Woodward* column 2 line 60, and never indicates that Fragment 34 could be used to indicate the location of chunk ends. Further, because fragment 34 is described as being merely two bits in size, it does not appear that fragment 34 would be capable of containing this information. Although the Final Action does not rely on it to do so, *Miles* does not appear to teach or suggest framing symbols either. Since the combination does not teach or suggest all of the limitations of claim 1, the Final Action has failed to establish a prima facie case for rejecting it. The Applicants respectfully ask the Examiner to withdraw the rejection of claim 1.

The unsuitability of fragment 34 becomes even more apparent in an inspection of the claims depending from claim 1. For example, claim 2 recites “wherein said framing symbol is located adjacent the trailing end of each said chunk,” claim 3 recites “wherein said framing symbol has a length of 16 bytes,” and claim 4 recites “wherein said framing symbol includes two bits of said framing symbol intermixed in each of 56 contiguous bytes of said chunk immediately followed by two contiguous bytes of said framing symbol.” Fragment 34 is

incapable of meeting any of these limitations. In Figures 1-3, *Woodward* explicitly places fragment 34 immediately before payload 106, thus fragment 34 does not teach or suggest claim 2. At column 4 line 64, *Woodward*, explicitly limits fragment 34 to two bits in length, thus fragment 34 does not teach or suggest claim 3. Teaching fragment 34 to be merely 2 bits in length and located outside the payload also make it incapable of being intermixed with the bytes of the chunk, as required by claim 4.

Each of claims 2-4, 14-22, and 24 depend directly or indirectly from claim 1 and each inherit all of the limitations of claim 1. In addition to *Woodward* and *Miles*, the rejections of claims 2-4 and 19 appear to include Official Notices. Although the Final Action does not rely on them to do so, the Applicants respectfully submit that the Official Notices do not teach or suggest the missing limitations either. Therefore each of claims 2-4, 14-22, and 24 includes limitations neither sought nor suggested by the cited art, and the Applicants respectfully ask the Examiner to withdraw the rejections to these claims as well.

In addition, the Final Action's rejections for claims 2-4, and 19 are defective for lack of motivation. The Final Action rejects claims 2-4 and 19 by combining *Woodward*, *Miles*, and one or more Official Notice. Without conceding the validity of any Notice itself, the Applicants respectfully submit that no motivation actually exists for combining them with the teachings of *Woodward* and *Miles*. In rejecting claims 2-4 and 19, the Final Action contends that "Woodward did not disclose the location of the framing symbol and the length of the framing symbol," see Final Action page 4, and this leads the Examiner to posit that it would be obvious for one of ordinary skill in the art to obtain such teachings elsewhere. However, the Applicants respectfully remind the Examiner that the Final action has relied on fragment 34 to be a framing symbol, and that the location and size of fragment 34 is specifically taught by *Woodward*. The Final Action gives no reasoning for altering the explicit teachings of *Woodward*, thus has failed to provide motivation for this combination. Further, the Final Action appears to argue that combining *Woodward*, *Miles*, and the Official Notices in the manner of claims 2-4 and 19 is obvious as it would allow *Woodward* to operate in a frame-relay environment. The Applicants disagree, and respectfully point out *Woodward*, *Miles*, and the Official Notices fail to teach or suggest any of the frame symbol attributes that would facilitate operations in a frame-relay network. Therefore, in addition to the reasons given

above, the rejections of claims 2-4 and 19 fail to cite a proper motivation, and the Applicants respectfully ask the Examiner to withdraw these rejections as well.

Claim 25 recites “formatting overhead information onto each of said chunks, said overhead including a framing symbol.” The Applicants respectfully assert that the combination of *Woodward* and *Miles* does not teach or suggest these limitations. The Final Action contends that fragment 34 of *Woodward* is a framing symbol. However, a framing symbol “is used to determine where in a stream of bits beginning and trailing end of a chunk are located,” *see* the disclosure page 10 line 20. In contrast, the *Woodward* citations indicated by the Final Action teach that fragment 34 indicates whether a payload consists of one or multiple ATM cells, *see Woodward* column 3 lines 40-43, but never teaches or suggests that Fragment 34 could be used in the manner of claim 25. Further, because fragment 34 is described as being merely two bits in size, it does not appear that fragment 34 would be capable of containing this information. Although the Final Action does not rely on it to do so, *Miles* does not appear to teach or suggest framing symbols either. Since the combination does not teach or suggest all of the limitations of claim 25, the Final Action has failed to establish a *prima facie* case for rejecting it. The Applicants respectfully ask the Examiner to withdraw the rejection of claim 25.

The unsuitability of fragment 34 becomes even more apparent in an inspection of the claims depending from claim 25. For example, claim 27 recites “wherein said framing symbol is located adjacent the trailing end of each said chunk,” claim 28 recites “wherein said framing symbol has a length of 16 bytes,” and claim 29 recites “wherein said framing symbol includes two bits of said framing symbol intermixed in each of 56 contiguous bytes of said chunk immediately followed by two contiguous bytes of said framing symbol.” Fragment 34 is incapable of meeting any of these limitations. In Figures 1-3, *Woodward* explicitly places fragment 34 immediately before payload 106, thus fragment 34 does not teach or suggest claim 27. At column 4 line 64, *Woodward*, explicitly limits fragment 34 to two bits in length, thus fragment 34 does not teach or suggest claim 28. Teaching fragment 34 to be only 2 bits in length and located outside the payload also make it incapable of being intermixed with the bytes of the chunk, as required by claim 29. Thus, the combination of *Woodward* and *Miles* does not teach or suggest all of the limitations of these claims either. Each of claims 26-29, 37-48, 53, and 57-62 depend either directly or indirectly from claim 25

and inherit all of the limitations of claim 25. In addition to *Woodward* and *Miles*, the rejection of claims 27-29, 42, 46, 48, 53, and 57-62 appear to include Official Notices. Although the Final Action does not rely on them to do so, the Applicants respectively submit that the Official Notices do not teach or suggest the missing limitations either. Therefore, each of claims 26-29, 37-48, 53, and 57-62 contain limitations not taught or suggested by the cited combination, and the Applicants respectfully ask the Examiner to withdraw the rejections to these claims as well.

In addition, the Final Action's rejections for claims 46, 48, 53, and 57-62 are defective because the Final Action lacks motivation for combining the cited references. The Final Action rejects claims 2-4, and 19 by combining *Woodward*, *Miles*, and one or more Official Notices. Without conceding the validity of any Notice itself, the Applicants respectfully submit that no motivation actually exists for combining them with the teachings of *Woodward* and *Miles*. For each of claims 46, 48, 53, and 57-62, the Final Action contends that its limitations would be obvious to a person of ordinary skill in the art because they are "design choices" that allow the proper routing of data information through a communication network. This appears to be an attempt to justify the Official Notices as mere "Aesthetic Design Changes." However, the Applicants respectfully remind the Examiner that it is not appropriate to rely on a conclusion that a limitation is commonly known if "the applicant has demonstrated the criticality of the specific limitation." See M.P.E.P. § 2144.04. The Final Action's own justification shows at least a portion of this criticality when it states that the limitations allow the proper routing data information through a communication network. Therefore, the Official Notices and the reasons for combining them are improper, and, in addition to the reasons given above, the rejections of claims 46, 48, 53, and 57-62 fail to establish a prima facie case. Thus, the applicants respectfully ask the Examiner to withdraw these rejections as well.

C. The Rejections Using a Combination of *Woodward*, *Miles*, and *Feldmeier*

Claims 5, 6, 11, 12, 30, 31, 55, and 56 are rejected as obvious over *Woodward*, *Miles*, and *Feldmeier*, U.S. Patent No. 5,583,859 (hereinafter *Feldmeier*). However, claims 5, 6, 11, and 12 depend directly or indirectly from claim 1 and claims 30, 31, 55, and 56 depend either directly or indirectly from claim 25, thus each of claims 5, 6, 11, 12, 30, 31, 55, and 56

inherit the limitations of its respective base claim. As demonstrated above, the combination of *Woodward* and *Miles* fail to teach or suggest all of the limitations of claims 1 and 25, and while the Final Action does not rely on it to do so, *Feldmeier* does not appear to teach or suggest the missing limitations either. Thus, the combination of *Woodward*, *Miles*, and *Feldmeier* fail to establish a primary case for rejecting claims 5, 6, 11, 12, 30, 31, 55, and 56, and the Applicants respectfully ask the Examiner to withdraw the rejection of these claims as well.

D. The Rejections Using *Woodward*, *Miles*, and *Spendley*

Claims 7-10, 33-36, 49, and 50-52 are rejected as obvious over *Woodward*, *Miles*, and *Spendley*, U.S. Patent No. 2,086,184 (hereinafter *Spendley*). However, claims 7-10 depend directly or indirectly from claim 1 and claims 33-36, 49, 50, and 52 depend either directly or indirectly from claim 25, thus each of claims 7-10, 33-36, 49, and 50-52 inherit the limitations of its respective base claim. As demonstrated above, the combination of *Woodward* and *Miles* fail to teach or suggest all of the limitations of claims 1 and 25, and while the Final Action does not rely on it to do so, *Spendley* does not appear to teach or suggest the missing limitations either. Thus the combination of *Woodward*, *Miles*, and *Spendley* fail to establish a primary case for rejecting claims 7-10, 33-36, 49, and 50-52, the Applicants respectfully ask the Examiner to withdraw the rejection of these claims as well.

Although included with 7-10, 33, 35, 36, 49, and 50-52, Claims 34 and 36 appear to be rejected in light of *Woodward*, *Miles*, and an Official Notice. While the Final Action does not rely on it to do so, the Official Notice does not appear to teach or suggest the missing limitations either. Further, the Final Action states that it would have been obvious to add the limitations of claims 34 and 36 to *Woodward* and *Miles* because it would allow data to be controllably routed through a switch fabric. However, the Applicants respectfully remind the Examiner that it is not appropriate to rely on a conclusion that a limitation is commonly known if “the applicant has demonstrated the criticality of the specific limitation.” See M.P.E.P. § 2144.04. The Final Action’s own justification shows at least a portion of this criticality when it states that the limitations allow data to be controllably routed through a switch fabric. Thus, the Official Notices and the reasons for combining them are improper, and, in addition to the reasons given above, the rejections of claims 34 and 36 fail to establish

a prima facie case. Thus, the applicants respectfully ask the Examiner to withdraw these rejections as well.

Although included with 7-10, 33-36, 49, and 50, claims 51 and 52 appear to be rejected in light of *Woodward, Miles*, and an Official Notice. While the Final Action does not rely on it to do so, the Official Notice does not appear to teach or suggest the missing limitations either. Further, the Final Rejection appears to state that it would have been obvious to add the limitations of claims 51 and 52 to *Woodward* and *Miles* because it would allow data information to be routed through a SONET properly. However, the Applicants respectfully remind the Examiner that it is not appropriate to rely on a conclusion that a limitation is commonly known if “the applicant has demonstrated the criticality of the specific limitation.” See M.P.E.P. § 2144.04. The Final Action’s own justification shows at least a portion of this criticality when it states that the limitations allow data information to be routed through a SONET properly. Thus, the Official Notices and the reasons for combining them are improper, and, in addition to the reasons given above, the rejections of claims 51 and 52 fail to establish a prima facie case. Thus, the applicants respectfully ask the Examiner to withdraw these rejections as well.

E. The Rejections Using *Woodward, Miles*, and *Enns*

Claims 13, 32, and 54 are rejected as obvious over *Woodward, Miles*, and *Enns* et al., U.S. Patent No. 6,658,010 (hereinafter *Enns*). However, claim 13 depends directly from claim 1 and claims 32 and 54 depend either directly or indirectly from claim 25, thus each of claims 13, 32, and 54 inherit the limitations of its respective base claim. As demonstrated above, the combination of *Woodward* and *Miles* fail to teach or suggest all of the limitations of claims 1 and 25, and while the Final Action does not rely on it to do so, *Enns* does not appear to teach or suggest the missing limitations either. Thus the combination of *Woodward, Miles*, and *Enns* fail to establish a primary case for rejecting claims 13, 32, and 54, and the Applicants respectfully ask the Examiner to withdraw the rejection of these claims as well.

In addition, claims 32 and 54 appear to be rejected by a combination of *Woodward, Miles, Enns*, and an Official Notice. Although the Final Action does not rely on it to do so, the Official Notice does not appear to teach or suggest the missing limitations either. Further,

the Final Action appears to contend that it would have been obvious to one of ordinary skill in the art to add the limitations of claims 32 and 54 to the teachings of *Woodward*, *Miles*, and *Enns*, because doing so would allow data information to be routed through a SONET properly. However, the Applicants respectfully remind the Examiner that it is not appropriate to rely on a conclusion that a limitation is commonly known if "the applicant has demonstrated the criticality of the specific limitation." See M.P.E.P. § 2144.04. The Final Action's own justification shows at least a portion of this criticality when it states that the limitations data information to be routed through a SONET properly. Therefore, the Official Notices and the reasons for combining them are improper, and, in addition to the reasons given above, the rejections of claims 32 and 54 fail to establish a prima facie case. Thus, the applicants respectfully ask the Examiner to withdraw these rejections as well.

IV. Conclusion

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicants believe no fee is due with this response. However, if a fee is due, please charge Deposit Account No. 06-2380, under Order No. 59182/P004US/10020641 from which the undersigned is authorized to draw.

Dated: August 25, 2004

Respectfully submitted,

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